UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,676	07/10/2003	Daniel Charles Birkestrand	ROC920030147US1	2588

46296   7590   12/23/2008
MARTIN & ASSOCIATES, LLC
P.O. BOX 548
CARTHAGE, MO 64836-0548

EXAMINER
ZARE, SCOTT A

ART UNIT	PAPER NUMBER
3687	

MAIL DATE	DELIVERY MODE
12/23/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/616,676	BIRKESTRAND ET AL.
	Examiner	Art Unit	
	SCOTT A. ZARE	3687	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 November 2008*.
2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *19-21,23,45 and 46* is/are pending in the application.
     4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) *19-21,23,45 and 46* is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
     a)☐ All   b)☐ Some * c)☐ None of:
       1.☐ Certified copies of the priority documents have been received.
       2.☐ Certified copies of the priority documents have been received in Application No. _____.
       3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
     * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date *10/09/2008 and 10/30/2008*.
4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____ .

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set

forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this

application is eligible for continued examination under 37 CFR 1.114, and the fee set

forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action

has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on

11/20/2008 has been entered.

Information Disclosure Statement

The information disclosure statement filed 10/30/2008 fails to comply with the

provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because the cited non-patent

literature has not been received and entered into the electronic file wrapper. The

information disclosure statement has been placed in the application file, but the

information referred to therein has not been considered as to the merits. Applicant is

advised that the date of any re-submission of any item of information contained in this

information disclosure statement or the submission of any missing element(s) will be the

date of submission for purposes of determining compliance with the requirements based

on the time of filing the statement, including all certification requirements for statements

under 37 CFR 1.97(e). See MPEP § 609.05(a).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or
> described as set forth in section 102 of this title, if the differences between the subject
> matter sought to be patented and the prior art are such that the subject matter as a
> whole would have been obvious at the time the invention was made to a person having
> ordinary skill in the art to which said subject matter pertains. Patentability shall not be
> negatived by the manner in which the invention was made.

Claims 19-21, 23 and 45-46 are rejected under 35 U.S.C. 103(a) as being

unpatentable over *Circenis et al.* (US 7,146,496, filed Jan. 23, 2003, referred hereinafter

as "*Circenis*") in view of *Armstrong et al.* (US 2002/0156824, referred hereinafter as

"*Armstrong,*" which qualifies as a 35 U.S.C. 102(a) reference with a publication date of

October 24, 2002).

In regard to claims 19, *Circenis* discloses a computer-implemented method for

providing metered capacity of at least one temporary resource on demand in a

computer system that includes a plurality of logical partitions, the method comprising the

steps of:

- receiving an enablement code from a user of the computer system (see

  column 5, line 44, disclosing receiving a "codeword" from vendor), wherein

  the enablement code includes a specified resource-time (see column 12, lines

  1-10, disclosing that preferably the codeword encodes information including

  "the amount of temporary capacity granted", i.e., "a specified resource-time");

- determining whether the enablement code is valid (see column 8, lines 1-4,

  disclosing user must type in a valid codeword);

- after determining the enablement code is valid, performing the steps of:

  o enabling the at least one resource for metered operation by a selected

    logical partition (see column 5 line 60 - column 6, line 45, disclosing how

    "ICOD components" can be activated and subsequently metered; see also

    column 8, lines 5-20, disclosing "the ICOD computer system is

    implemented as a partitionable computer system");

  o metering actual usage of the at least one resource by the selected logical

    partition (see column 6, lines 14-45, disclosing tracking consumption of

    temporary capacity) above a predetermined non-zero threshold that

    specifies allowable usage of the at least one resource by the selected

    logical partition (see column 9, lines 15-35, disclosing "a negative

    temporary capacity balance.").

While *Circenis* does not explicitly disclose:

- *billing* for the actual usage of the at least one resource,

- determining whether the enabled resource is shared by the selected logical

  partition and at least one other logical partition.

In regard to the billing step, *Circenis* discloses debiting a user's account which

could arguably be construed to mean "billing for actual usage." (See column 6, lines 46-

60, disclosing debiting consumption from the current temporary capacity balance.)

Moreover, it would have been obvious to one of ordinary skill in the art at the time of the

invention to generate a bill rather than debit a prepaid account because these steps are notoriously old and well-known to be interchangeable depending on the preferences of the service provider and the customer (i.e. design choice).

In regard to the determining step, although *Circenis* contemplates implementing the ICOD computer system on a partitionable computer system, the details regarding the implementation of the OCID computer system are absent from the specification. *Armstrong* fills in this gap by teaching that certain resources (e.g., processors) may be allocated such that there is no sharing of a single resource among different partitions ("dedicated"), while other resources may be shared among partitions ("pooled"). (See *Armstrong*, paragraph 23.) Furthermore, *Armstrong* teaches the step of determining whether an enabled resource is shared by the selected logical partition and at least one other logical partition. (See paragraph 52, demonstrating that the system can differentiate between resources that are "pooled" between multiple partitions and resources that are "dedicated" to a single partition)

It would have been obvious to one of ordinary skill in the art of allocating computer resources to modify *Circenis* to include both shared and dedicated resources, and a step of determining whether the enabled resource is shared by the selected logical partition and at least one other logical partition. The option to share resources among partitions or dedicate a resource to a single partition provides flexibility dependent upon the users needs. For example, it may preferred to pool resources among partitions performing low priority functions, while dedicating resources to partitions performing high priority functions.

In regard to claims 20 and 21, *Circenis* additionally discloses wherein the

generated bill is for metered resource-time that represents actual use of the at least one

resource (see column 6) and deducting metered resource-time from a prepaid resource-

time (see column 6, lines 46-60, and disclosing debiting consumption from the current

temporary capacity balance).

In regard to claim 23, *Circenis* additionally discloses the step of disabling the at

least one resource when the metered actual usage of the at least one resource exceeds

a specified resource-time. (See column 7, disclosing "deactivation.")

In regard to claim 45, *Circenis* discloses a computer-implemented method for

providing metered capacity of at least one temporary resource on demand in a

computer system that includes a plurality of logical partitions, the method comprising the

steps of:

- requesting an enablement code from a resource provider for the computer

  system (see column 5, lines 35-60, disclosing activating the inactive ICOD

  components at the request of the user);

- receiving the enablement code from the resource provider (see column 5, line

  44, disclosing receiving a "codeword" from vendor), wherein the enablement

  code includes a specified resource-time for a selected resource (see column

  12, lines 1-10, disclosing that preferably the codeword encodes information

including "the amount of temporary capacity granted", i.e., "a specified

resource-time");

- enabling the selected resource for use (see column 5 line 60 - column 6, line

  45, disclosing how "ICOD components" can be activated and subsequently

  metered);

- when the selected resource is dedicated to one of the plurality of logical

  partitions, performing the steps of:

  o starting a meter timer (see column 6, disclosing "the temporary capacity

     balance may be tracked using a universal unit");

  o using the selected resource until a time to bill occurs (see column 6, lines

     37-45, disclosing "periodically . . . tak[ing] an inventory of the number of

     components currently active on the ICOD system);

  o sending a record of metered usage to the resource provider based on

     value of the meter timer (see column 6, lines 46-60, disclosing the ICOD

     software agent may inform the user the current rate of consumption); and

Circenis does not explicitly disclose when either condition is met,

- the resource provider *sending a bill* for metered usage of the selected

  resource to a customer, or the resource provider *sending a bill* for metered

  usage of the selected resource that excess the second predetermined non-

  zero threshold to the customer.

- when the selected resource is shared between first and second logical

  partitions, performing the above-mentioned steps for each logical partition

In regard to the resource provider sending a bill step, *Circenis* discloses debiting a user's account which could arguably be construed to mean "billing for actual usage." (See column 6, lines 46-60, disclosing debiting consumption from the current temporary capacity balance.) Moreover, it would have been obvious to one of ordinary skill in the art at the time of the invention to generate a bill rather than debit a prepaid account because these steps are notoriously old and well-known to be interchangeable depending on the preferences of the service provider and the customer (e.g., design choice).

In regard sharing a resource between first and second logical partitions, although *Circenis* does contemplate implementing the ICOD computer system on a partitionable computer system, the details regarding the implementation of the OCID computer system are absent. *Armstrong* fills in this gap by teaching that certain resources may be allocated such that there is no sharing of single resources among different partitions ("dedicated"), while other resources may be shared among partitions ("pooled"). (See *Armstrong*, paragraph 23.) Furthermore, *Armstrong* teaches the step of determining whether the enabled resource is shared by the selected logical partition and at least one other logical partition. (See paragraph 52, demonstrating that the system can differentiate between resources that are "pooled" between multiple partitions and resources that are "dedicated" to a single partition)

It would have been obvious to one of ordinary skill in the art of allocating computer resources to modify *Circenis* to include both shared and dedicated resources,

and further metering the usage of the resources shared by each logical partition. The option to share resources among partitions or dedicate a resource to a single partition provides flexibility dependent to the user. For example, it may preferred to pool resources among partitions performing low priority functions for a discounted price, while dedicating resources to partitions performing high priority functions for a premium price. Furthermore, metering the usage would be necessary to ensure that certain partitions do not monopolize system resources. (See paragraph 26.)

In regard to claim 46, claim 46 merely combines all the elements recited in claims 20-23 and 45. Therefore, each element in the claim is rejected under a similar rationale as described above.

Response to Arguments

Applicant's arguments filed 04/06/2008 have been fully considered but they are moot in view of a new ground of rejection necessitated by amendment.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SCOTT A. ZARE whose telephone number is (571)270-3266. The examiner can normally be reached on Monday - Friday, 8:00 a.m. - 5:00 p.m., EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matt Gart can be reached on (571) 272-3955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Matthew S Gart/
Supervisory Patent Examiner, Art
Unit 3687

Scott A Zare
Art Unit 3687
December 18, 2008